

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

FAO No.9527 of 2014.

Date of Decision: 16.05.2016.

Illiyaas @ Mohd. Illiyas

....Appellant.

VERSUS

Ram Niwas and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Sanjeev Kumar Bawas, Advocate for the appellant.

Ms. Shamsheer Kaur, Advocate for respondent No.3.

SNEH PRASHAR, J.

By way of this appeal, appellant-claimant Illiyas @ Mohd. Illiyas seeks enhancement of compensation awarded by learned Motor Accident Claims Tribunal, Nuh (for short, "the Tribunal") vide award dated 18.11.2013 passed in MACT Case No.303 of 2011, filed by him on account of injuries sustained in a vehicular accident on 28.03.2007.

The submissions made by Mr. Sanjeev Kumar Bawa, learned counsel for the appellant and Ms. Shamsheer Kaur, learned counsel for respondent No.3 have been heard and record perused.

Learned counsel for the appellant argued that the appellant sustained fracture of right tibia and fibula and became disabled to the extent of 40%. He was a driver by profession and due to the permanent disability

suffered by him, he has become unfit for working as such. He remained hospitalized for a long time and spent approximately Rs.1,50,000/- on his treatment, transportation and special diet etc. He suffered loss of income during the period of hospitalization and follow up treatment and spent good amount on his transportation, nutritious diet etc., but learned Tribunal failed to compensate him adequately and only a nominal amount of Rs.30,000/- was allowed to him as compensation.

In addition to his own deposition made through affidavit Ex.PW1/A, the appellant tendered in evidence two medical documents (injury and accident record Mark-A and X-ray report Mark-B) prepared at Mayur Hospital and Research Centre. As per the said documents, the appellant had suffered comminuted fracture of right tibia and fibula. Neither it was mentioned by him in his affidavit, nor the discharge summary of the hospital was produced to prove the period of his hospitalization. However, in his cross-examination, he stated that he remained hospitalized w.e.f. 28.03.2007 to 08.04.2007. He tendered in evidence disability certificate Mark-C, but examined no doctor/member of the medical board who assessed the alleged disability. In absence of required evidence, neither the injuries mentioned in the disability certificate nor the disability assessed can be related to the injury suffered by the appellant during the accident in question. In fact, there is no evidence to prove that the injury sustained by the appellant during the accident in question led to any disability to the appellant. As such, learned Tribunal rightly did not take the disability certificate into consideration.

No bills showing expenditure on treatment were produced by the appellant, though he stated that he had spent Rs.90,000/- on his treatment and medicine. Anyhow, the fact remains that he had suffered a grievous injury i.e. fracture of both bones of right leg and he took treatment from a private hospital. Apart from paying the hospital charges, he also must have incurred expenses on purchase of medicine etc. The amount of Rs.5000/- allowed by learned Tribunal on this count appears to be on the lower side. Accordingly, the said amount is enhanced to Rs.15,000/- and the amount of Rs.15,000/- allowed for the pain and suffering undergone by the appellant is enhanced to Rs.20,000/-.

Since the injury suffered by the appellant was grievous i.e. fracture of both bones of right leg, he may not have been able to attend to his daily necessities and routine work for atleast four months. Assessing his income as Rs.5000/- per month, the amount of Rs.5000/- allowed by learned Tribunal on account of loss in income is enhanced to Rs.20,000/-. As regards, the amount spent on his transportation by the appellant, learned Tribunal awarded him Rs.5000/-. Being confined to bed, he required a full time attendant. Since no evidence was led by the appellant in this regard, it is assumed that his family members were attending on him. For doing so, he must have spent on their transportation and boarding-lodging as well. In addition to the same, he must have spent on special diet as well and under both these heads, a further amount of Rs.5,000/- is allowed to him.

Accordingly, the appeal filed by the appellant-claimant is partly allowed and the award dated 18.11.2013 passed by learned Tribunal

is modified. The enhanced compensation of Rs.35,000/- shall be paid to the appellant within 45 days from the date of receipt of certified copy of this judgment failing which the appellant-claimant shall be entitled to interest on the enhanced amount at the rate of 7.5% per annum from the date of filing the appeal till realization.

(SNEH PRASHAR)
JUDGE

16.05.2016.
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